

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWAYNE MATTHEW REESE,

Defendant-Appellant.

UNPUBLISHED
November 2, 2001

No. 224292
Macomb Circuit Court
LC No. 99-001027-FH

Before: Doctoroff, P.J., and Wilder and Chad C. Schmucker*, JJ.

MEMORANDUM.

Defendant was convicted of one count of first-degree criminal sexual conduct, MCL 750.520b(1)(f), and sentenced to four to eight years' imprisonment. Defendant appeals his conviction as of right. We affirm.

Defendant raises two issues on appeal: (1) that he was denied effective assistance of trial counsel due to his counsel's failure to prepare and failure to properly inform him of his right to testify on his own behalf; and (2) that his conviction must be reversed because the circuit court failed to instruct the jury regarding the lesser included offense of third-degree criminal sexual conduct. We find no error.

The record presented does not show that defendant's trial counsel failed to prepare for trial or failed to adequately consult with defendant. Moreover, there was no indication that lack of additional consultation or preparation resulted in any prejudice to the defense. Defendant does not argue that the alleged lack of consultation or preparation caused his trial counsel to miss a possible defense or fail to present relevant evidence. Whether to have a defendant or other witnesses testify is a matter of trial strategy that should not be second-guessed by this Court. Furthermore, there is no indication that the failure to have defendant testify prejudiced the defense. Defendant has not shown that his trial counsel's performance was deficient or that errors by counsel prejudiced the defense. Accordingly, he has not shown that he was denied the effective assistance of trial counsel. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 LEd2d 674 (1984); *People v Pickens*, 446 Mich 298, 325-326; 521 NW2d 797 (1994).

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant never requested a lesser included offense instruction of third-degree criminal sexual conduct on the first-degree criminal sexual conduct charge. He cannot obtain reversal of his conviction due to the absence of an instruction he did not request. *People v Hendricks*, 446 Mich 435, 440-441; 521 NW2d 546 (1994); *People v Pouncey*, 437 Mich 382, 386; 471 NW2d 346 (1991).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

/s/ Chad C. Schmucker